

# Program Evaluation Report

New York's Base Drinking Water State Revolving Fund  
Program Activities During FFY 2016

7/31/2017

Prepared by the State Revolving Fund Program Section



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## I Introduction

On September 20, 2016, the U.S. Environmental Protection Agency (EPA) awarded the New York State Department of Health (NYSDOH) \$39,900,000 in Federal Fiscal Year (FFY) 2016 base program funds. This PER summarizes the results of Region 2's review of the New York State Department of Health's implementation of the Drinking Water State Revolving Fund (DWSRF) base program during Federal Fiscal Year 2016. The on-site project file review was conducted April 24 through 26, 2017 and transaction testing was conducted on April 24 through 28, 2017.

The DWSRF program was authorized by the Safe Drinking Water Act (SDWA) of 1996 to provide capitalization grants to the States and the Commonwealth of Puerto Rico to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements. In addition to financing infrastructure projects, States are authorized to set aside a portion of their capitalization grant to fund a range of activities including program administration, source water protection and capacity development. Each State has considerable flexibility in determining the design of its program and in directing funding towards its most pressing compliance and public health needs; however, this flexibility must always be conducted within the SDWA and the framework of underlying program requirements.

The U.S. Environmental Protection Agency (EPA) Region 2 oversight of the DWSRF programs assesses each state's performance and compliance with statutes, regulations, the operating agreement (OA), and the grant conditions governing DWSRF programs. The oversight is accomplished via a continuous process of review and evaluation of key program elements. The review process includes examination of project files, program elements and transaction testing during on-site reviews conducted at state offices. The culmination of the review process is this Program Evaluation Report (PER).

## II Program Background

The New York State Drinking Water State Revolving Fund program is jointly administered by the New York State Department of Health (NYSDOH) and the New York State Environmental Facilities Corporation (NYSEFC). The NYSDOH is the DWSRF EPA grant recipient and oversees the technical aspects of the program, while NYSEFC administers the financial operations of the program.

The DWSRF Base program requires the State to provide a 20% match of the Federal capitalization grant amount along with a one to one match of the program management set-aside. The Federal and State funds are leveraged each year, which enables the State to provide assistance to more projects. Leveraging has proved to be a powerful tool for New York, resulting in funds disbursed for project assistance totaling 347% (\$4.10 billion) of the cumulative Federal capitalization grant amounts (\$1.18 billion<sup>1</sup>) as of September 30, 2016. This amount includes \$1.05 billion (26% of all disbursed funds) in assistance to disadvantaged communities. New York State has a greater need for water infrastructure investment than almost every other state. In the most recent Drinking Water Needs Survey and Assessment, dated February 2011, it was estimated that \$24 billion will be needed in New York to ensure the delivery of safe drinking water through 2031. A significant disparity exists between the projects needing funding and projects seeking funding, whether through the SRF program or from other sources.

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<sup>1</sup> Includes Disaster Relief Appropriation Act capitalization grant amount of \$56,572,914.

### III Scope of Review

In order to accurately report on program performance familiarity should be maintained with the following reporting and documentation time periods that will be used in this PER:

Reporting Year/Document	Start Date	End Date
Federal Fiscal Year 2016	October 1, 2015	September 30, 2016
State Fiscal Year 2016	April 1, 2015	March 30, 2016
NIMS Reporting Year 2016	July 1, 2015	June 30, 2016
Biennial Report FFY 2015-2016	October 1, 2014	September 30, 2016
Final Intended Use Plan FFY 2016	October 1, 2015	September 30, 2016

#### Programmatic Review Process

During the weeks preceding the on-site review, Region 2 staff reviewed available supporting documentation and partially completed the programmatic and project file review checklists. During the on-site review, Region 2 staff examined two base program project files and completed the project file review checklists. Interviews were conducted with state staff and the programmatic review checklist was partially completed. After the on-site review a list of follow up items was sent to state staff and answers were sent back to Region 2 in order to complete the programmatic checklist in a timely manner.

#### Documents Reviewed

- Grant Agreement #FS-99290516-0
- Intended Use Plan, FFY 2016
- Biennial Report, FFY 2015-2016
- Set Aside Workplan, FFY 2016
- Set Aside Workplan, FFY 2015
- Performance Status Report, FFY 2016
- DWSRF NIMS
- PBR Database Reports
- COMPASS Reports
- Independent Audit Reports
- NYS SERP Documentation
- State Project Files

#### Participating Regional Staff

The table below lists EPA Region 2 staff members who participated in the on-site review the week of April 24, 2017.

U.S. EPA Region 2	Title	Role in On-Site Review
Stephen Vida, P.E.	State Revolving Fund Program Section Chief	Conducted entrance/exit conference and assisted with on-site review preparation.
Daniel D'Agostino	DWSRF Coordinator	Conducted project file review, programmatic review.
Nancy Chong	Financial Analyst	Transaction testing

#### State Staff Interviewed

Representatives from the New York State Department of Health and the New York State Environmental Facilities Corporation were interviewed and consulted during the on-site review process. The following is a list of state staff interviewed and their titles at their respective agencies:

New York State Department of Health	Title
Michael Montysko, P.E.	Chief, Design Section
Brock Rogers, P.E.	Design Section
New York State Environmental Facilities Corporation	Title
Timothy P. Burns, P.E.	Director, Division of Engineering and Program Management
David S. Bradley, P.E.	Deputy Director, Division of Engineering and Program Management

## IV Funding Sources and Uses

### Funding Sources

The FFY 2016 capitalization grant for the DWSRF program in NYS was awarded to the NYSDOH on September 20, 2016 for \$39,900,000. A state receiving a DWSRF Base program grant is required to contribute a 20% match using state funds. Additionally, there is a required 1:1 match of the Program Management set aside. The table below lists the federal grant amounts, state match amounts (20% and 1:1 Program Management), and total 2016 funding amounts:

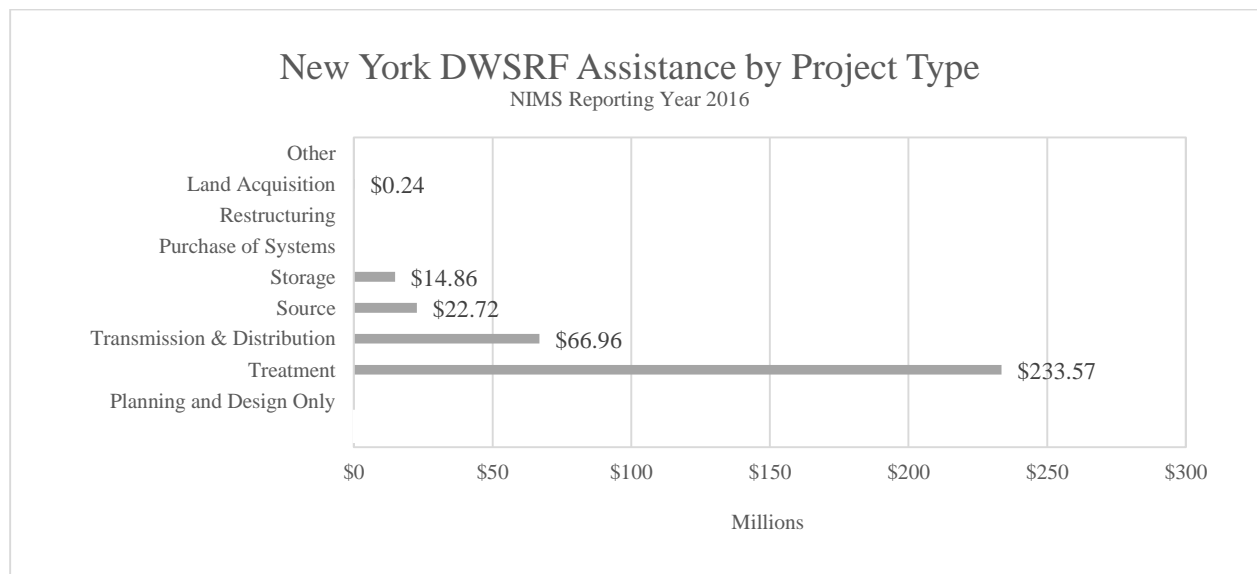
2016 Federal Capitalization Grant Amount	2016 20% State Match	2016 1:1 Program Management State Match	2016 Total Program Funding
\$39,900,000	\$7,980,000	\$3,990,000	\$51,870,000

The State provided a 20% matching share of \$7,980,000 as required by the SDWA. Also provided (as in-kind services) was the 1:1 program management set aside of \$3,990,000. The FFY 2016 project fund amount totaled \$41,496,000 and set-aside funds totaled \$10,374,000. Out of a possible 31%, a total of %16 of the 2016 capitalization grant was reserved for set-asides with the remainder being used for projects:

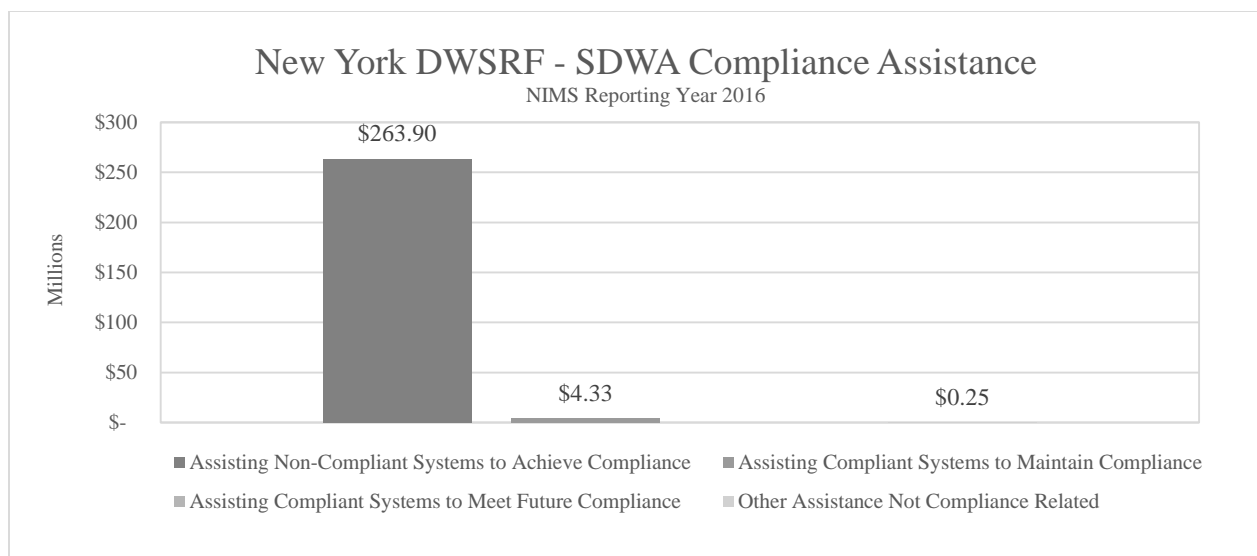
Funding Source	2016 Project Funds	2016 Set-Aside Funds	2016 Total Funds
Federal	\$33,516,000	\$6,384,000	39,900,000
State	\$7,980,000	\$3,990,000	11,970,000
Combined	\$41,496,000	\$10,374,000	51,870,000

### Funding Uses: Projects

For NIMS reporting year 2016, a total of \$338,358,180 in DWSRF funds were directed toward project use. Funding for these projects came from a variety of sources, including repayments. There was no financing of any non-construction projects other than \$241,732 for land acquisition. The bar chart below shows the distribution of funds expended during NIMS reporting year 2016 across all construction categories. The chart demonstrates that most of the DWSRF funding was directed towards treatment projects. Treatment projects receive more points during the project ranking process because they restore or maintain compliance with the regulatory standards of the Safe Drinking Water Act (SDWA).



As stated previously, priority is given to projects that are not in compliance with the regulatory standards of the Safe Drinking Water Act (SDWA). Funds are expended to restore these systems to a state of compliance. The graph below shows how spending is directed to projects in need of correction to restore or achieve present compliance:



### Funding Uses: Set-Asides

New York used \$6,384,000 from the 2016 capitalization grant to fund DWSRF set-asides. With the 1:1 Program Management set-aside match included, total set-aside funding for FFY 2016 was \$10,374,000. This total includes Administration, Small Systems Technical Assistance, and Program Management. The following table shows the distribution of set-aside funds:

2016 Total Set-Aside Funding	Administration (4%)	Technical Assistance (2%)	Program Management (10% + 1:1 Match)
\$10,374,000	\$1,596,000	\$798,000	\$7,980,000

In relation to what set-asides are available to New York under the DWSRF program, the State is utilizing the maximum amounts in all but one category. NYSDOH took the full share of the 4% administrative funding set-aside, the 2% Small Systems Technical Assistance set-aside and the 10% program management set-aside. The state elected to not use any of the 15% set-aside for Local Assistance & Other State Programs. Overall New York used 16% of the available 31% that is allowed for set-aside use.

## V Programmatic Observations

### Operating Agreement

The Operating Agreement (OA) and its attachments serve as a contract between EPA and NYS for the operation of the DWSRF program. The existing OA was signed on September 30, 1997 and has not been updated since the inception of the program. EPA, NYSDOH and NYSEFC will continually evaluate the current OA and determine what updates are required in a mutually agreed upon manner.

### 2016 Final Intended Use Plan

The Intended Use Plan (IUP) is an annual utilization plan which describes goals, funding policies, and management of the DWSRF program. The IUP also describes program changes and initiatives, long and short-term goals, financial status, amendment processes, set-aside activities, the disadvantaged community program and hardship, capacity assessment, and the state environmental review process. The IUP also contains project priority lists. The final Intended Use Plan (IUP) for FFY 2016 was issued on October 1, 2015. Six amendments were also issued, with the last of these publically issued on September 28, 2016. The amendments to the 2016 Final Intended Use Plan typically contain modifications to the costs associated with projects on the project priority list.

The project readiness list contained in the IUP list projects that may be funded within FFY 2016. The "Project Annual List" contains all projects for which the assistance recipient has submitted all required pre-construction technical documents to the NYSDOH or completed construction by September 4, 2015. The "Project Annual List" includes a subsidized funding line based on the availability of funds. The "Funding List" is made up of the subset of

projects that are above the subsidized funding line. These projects were expected to receive funding this IUP cycle. Other lists in the IUP include the “Category A” list of projects serving less than 10,000 people, and a “Category C (Hardship)” list of projects serving disadvantaged communities. The “Category B” list of projects serving greater than or equal to 10,000 people is no longer included. The IUP also includes the Multi-Year list which consists of projects where listing forms were submitted and reviewed previously. Within these lists, the NYSDOH awards the most points to systems that have the most significant compliance issues. If a project has an executed financing agreement and more funding is required for completion, it will receive significant bonus points. This ensures the completion of all projects. Project lists typically include a short description, project costs, description of financing, points received in ranking, and population served. New York State’s IUP scores and ranks projects consistent with its approved priority system.

Project bypass can occur in special conditions. For example, bypass can occur if a project does not progress as expected, or if an applicant does not submit a full application for a project after it has been above the subsidized funding line for two or more consecutive IUP periods. Funds made available through project bypass may be used for emergency financing to address imminent threats to public health, or to finance costs increases to projects above the subsidized funding line.

#### **2014-2015 Biennial Report**

As per 40 CFR 35.3550(n), “Biennial Report”, a State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreement. The State must submit biennial reports to Region 2’s Regional Administrator according to the schedule established in the capitalization grant agreement. The NYSDOH submitted its biennial report covering program activities during FFY 2014 and FFY 2015 on June 23, 2016 after the December 31, 2015 deadline. This report contained all required elements and is of high quality. The next biennial report covering program activities during FFY 2016 and FFY 2017 is due 90 days after the end of the Federal fiscal year on December 31, 2017. The NYSDOH needs to submit this report on time.

#### **DWSRF Administration**

Current staff manage the program with a very high level of professionalism and success. Due to current state budgets, the NYSDOH is not able to hire new employees. As in the past, the NYSDOH has been able to maintain program operations through the training of existing employees.

#### **Compliance with Environmental Review Requirements**

During FFY 2016, New York State maintained compliance with National Environmental Policy Act (NEPA) requirements by ensuring that projects funded under the DWSRF program are all subject to the State Environmental Quality Review (SEQR) process. During FFY 2015, the State consulted with EPA Headquarters which confirmed that New York State’s SEQR process meets the National Environmental Policy Act-like standard. EPA will conduct these reviews on an ongoing basis.

In implementing the SEQR process in New York State, an action (project) is subject to review under SEQR if any state or local agency has authority to issue a discretionary permit, license or other type of approval for that action. SEQR also applies if an agency funds or directly undertakes a project, or adopts a resource management plan, rule or policy that affects the environment. The assistance recipient may declare itself in writing as the “lead agency.” Other state or local agencies are permitted to object to the “lead agency” declaration. If there are no objections or responses within 30 days, the lead agency designation is confirmed. Under SEQR the lead agency determines whether the action is a Type I, Type II or Unlisted Action. Type II actions receive the equivalent of a “categorical exclusion.” Type I and Unlisted actions require that the lead agency complete an Environmental Assessment Form (EAF). This form assists the lead agency’s engineer to analyze and quantify all of the various impacts a project may have. If the engineer determines that there will be significant impacts, an Environmental Impact Statement will be required. If there are no significant impacts, the lead agency issues a “negative declaration”. Determinations are published online in the Environmental News Bulletin<sup>2</sup> (ENB) for public comment. The ENB serves as a running record of all SERP decisions made in New York State. The ENB entries for each project include a contact for the project and a time window when comments can be submitted.

*Appendix A contains a New York State Environmental Quality Review (SEQR) Process Diagram.*

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<sup>2</sup> The ENB can be accessed at <http://www.dec.ny.gov/enb/enb.html>.

### Compliance with Federal Cross-Cutting Authorities

Compliance with Federal Cross-Cutters is closely linked with the SEQR process. The full Environmental Assessment Form (EAF) form includes an evaluation of the Federal Cross-Cutters which is used by the “Lead Agency” to determine applicability and compliance. Letters are collected as required from involved New York State and Federal agencies. The State is able to effectively work with EPA and has utilized formal consultations to resolve cross-cutter issues. New York State should ensure that compliance is maintained and documented with both the National Historic Preservation Act and the Archaeological and Historic Preservation Act.

DWSRF recipients and their contractors are required to comply with DBE requirements through use of the DWSRF bid packet; project financing agreement; and grant agreement. Administrative conditions of the Award include the requirement for NYSDOH/NYSEFC to comply with 40CFR, Section 33.301. The condition requires DOH/EFC to comply with six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. DOH/EFC bid documents include DBE requirements. The bid packet provides DBE forms 6100-2, 3 and 4. The NYSDOH fully complies with DBE requirements. In order for payment to be made to a contractor, the assistance recipient must affirm that DBE and EEO requirements are being satisfied.

### Funding Eligibility

Listing forms and project applications are reviewed for project eligibility before funds are awarded. Multiple layers of eligibility review are conducted by the state regarding engineering reports, plans and specifications. Assistance recipients must sign a re-certification that all costs are eligible. Invoices are reviewed to determine eligibility or project costs. The two projects that were reviewed by EPA Region 2 were eligible for funding. The total invoiced amount of \$204,765,828.98 examined under transaction testing (4 transactions) contained only eligible costs. There were no improper payments. Otherwise eligible projects classified as priority systems based on EPA's Enforcement Targeting Tool (ETT) are not eligible for funding unless the proposed project will ensure capacity or compliance.

### Additional Subsidization Requirement

For FFY 2016, states were required to provide an amount equal to 20% of the capitalization grant as additional subsidy to eligible assistance recipients. This subsidy could be provided as negative interest rate loans, principal forgiveness, and/or grants to assistance recipients. Furthermore, states were allowed to provide an amount equal to 30% of the capitalization grant as additional subsidy to disadvantaged communities.

As of the issuance of this report, New York has two projects totaling \$2,609,886 in additional subsidization funds in the PBR system assigned to the FFY 2016 capitalization grant. New York has met the additional subsidization requirement for the FFY 2015 capitalization grants and is expected to meet this requirement for the FFY 2016 and FFY 2014 capitalization grants. The NYSDOH is commended for keeping the PBR as up to date as possible to ensure accurate reporting of program results and is encouraged to do so in the future.

Federal Fiscal Year	Federal Capitalization Grant Amount	Minimum Additional Subsidization	Maximum Additional Subsidization	NYSDOH Additional Subsidization <sup>3</sup>	Number of Projects
2016	\$39,900,000	\$7,980,000 (20%)	\$19,950,000 (50%)	\$2,609,886 (7%)	2
2015	\$42,176,000	\$8,435,200 (20%)	\$12,652,800 (30%)	\$8,881,354 (21%)	5
2014	\$42,455,000	\$8,491,000 (20%)	\$12,736,500 (30%)	\$7,881,114 (19%)	6

*Appendix B contains PBR reports for additional subsidization projects financed under the FFY 2015, 2014, and 2013 capitalization grants.*

### Assistance Provided to Small Systems

Each year the NYSDOH exceeds the minimum programmatic requirement to provide 15% of capitalization grant dollars to systems serving 10,000 or fewer customers. The NYSDOH reports this data in NIMS on an annual basis. For NIMS Reporting Year 2016, the NYSDOH directed \$52,352,298 to projects serving 10,000 or fewer customers, exceeding the 15% requirement.

<sup>3</sup> As reported in PBR as of the issuance of this report.



**Davis-Bacon Requirement**

The NYSDOH reviews bid documents, construction contracts, and project financing agreements for compliance with EPA Davis-Bacon language and wage rates. Wage rates included in construction contracts are checked for correct dates. Project financing agreements are only signed if they contain a statement requiring Davis-Bacon compliance. Before the State disburses funds for incurred costs, assistance recipients must sign and attest a certificate of compliance with Davis-Bacon wage rate requirements. This includes the requirement that wage rate interviews are being conducted.

**American Iron and Steel Requirement**

All project finance agreements contain a provision requiring the use of “American Made Iron and Steel (AIS).” NYSEFC published guidance on AIS compliance which contained a contractual clause that must be included in every construction contract that is subject to the AIS requirement<sup>4</sup>. NYSEFC's guidance document states that the State will conduct occasional site inspections including a review of AIS documentation. Items that will be reviewed during these inspections include AIS certifications from vendors, suppliers, or manufacturers; contract and subcontracts to verify that the AIS contractual language has been included; and the lists of the incidental iron and steel project components that are claimed under the AIS de minimis waiver.

**DWSRF Withholding Determinations**

Both the Regional Capacity Development and Operator Certification Program are reviewed by Region 2's Drinking Water and Groundwater Protection Section. Letters were issued to the NYSDOH affirming that the state is implementing its capacity development and operator certification strategies and no withholding is necessary.

**DWSRF, PWSS and Enforcement Coordination**

New York State's DWSRF and PWSS programs coordinate and regularly interact at all levels as they are both implemented by the same office in the NYSDOH. This structure allows the NYSDOH to regularly coordinate with field offices to assist non-compliant systems with correcting violations and ensure that non-compliant systems are aware of the assistance that the DWSRF can provide. New York State has a small system technical assistance contract with New York Rural Water for circuit riders that provide on-site technical assistance throughout the state.

**Reporting**

All projects financed during FFY 2016 are entered into the Project Benefits Reporting (PBR) system. Typically, staff at the NYSDOH will determine each Monday if any financing agreements were signed the week prior and will enter those projects into the database. A supervisor reviews all PBR data for accuracy, errors or omissions. This review process is continual.

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<sup>4</sup> Available for review on [www.efc.ny.gov](http://www.efc.ny.gov).

## VI Financial Observations

### Assistance Terms

New York State's financial assistance is designed to be flexible and maximize the amount of assistance provided while preserving the financial viability of the program. Terms of assistance are in compliance with SRF program requirements. Projects receiving long-term financing that fall above the subsidized funding line may receive subsidized interest or extended-term financing. Projects below the line may receive market rate financing. Projects receiving short-term financing which fall above the subsidized financing line may receive interest-free financing with market-rate financing available to other projects. Principal repayments start within a year of project completion. Hardship eligibility determinations are based on publically available U.S. Census Bureau American Community Survey (ACS) 2013 Five Year Median Household Income (MHI) data. A project must be on the Annual List with a priority ranking score at or above hardship application eligibility line to be eligible for hardship financing. If the community served by the project has an MHI below the state wide MHI it will be automatically evaluated. Projects with an MHI between 100% and 125% of the statewide MHI are required to submit a hardship application to receive hardship financing. To be eligible for grant assistance, community MHI must be less than 80% of the statewide MHI.

*Appendix C contains the New York State DWSRF Program Financing Options Matrix.*

### Use of Fees

New York State has established a fee structure to cover costs associated with program administration, bond issuance and transactions, council costs, financial advisory fees, printing costs, rating agency and trustee fees. A program administration fee of 1.1% of the project costs plus an annual fee of 0.11% of the outstanding principal balance of the financing are assessed to support the administration of the DWSRF program. The 1.1% program administration fee may be included as part of the financing. Non-hardship projects receiving short-term financing are charged an administrative fee equal to 0.6% of project costs. Fees accumulate in proportion to the amount of financing agreements signed thereby preventing large balances from accumulating. For NIMS reporting year 2016, the DWSRF collected \$2,569,631 from fees included in loans and \$1,125,603 from fees not included in loans. The DWSRF earned \$25,203 in interest from fee accounts.

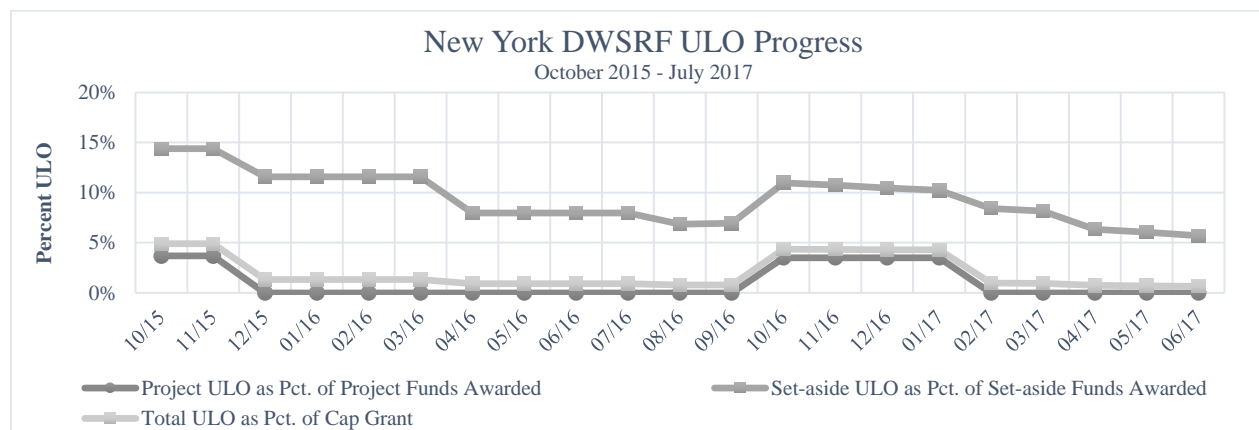
*Appendix D contains a tabulation of the New York State DWSRF Program fee structure.*

### State Match

The state is required to contribute a match equal to 20% of the grant amount. For FFY 2016, the state was also required to provide a 1:1 match for program management set-aside funds. For the 2016 DWSRF grant of \$39,900,000, NYSDOH contributed \$7,980,000 or 20% for the grant match requirement. NYSDOH provided \$3,990,000 as a 1:1 match to the DWSRF grant for program management. The source of match funding is New York State's Environmental Bond Act. This state match structure was approved by headquarters at the time the Operating Agreement was signed. For each year, the required state match dollars were deposited into the DWSRF and disbursed as required. NYSEFC made available accounting records to demonstrate this.

### Timely and Expeditious Use of Funds and Unliquidated Obligations

The overall DWSRF fund currently has unliquidated obligations (ULOs) of \$7,948,389 (0.7% of total awarded funds) as of the issuance of this report. This is extremely commendable. The graph below shows ULO progress for the DWSRF program since October 1, 2015:



### **Financial Management**

NYSEFC consistently evaluates how eligible assistance recipients make use of the program, and examines unmet infrastructure needs. Should demand be higher than available funds, NYSEFC increases the pace at which access to the capital markets is available. Long-term financial goals are to keep the program viable and in sound financial health. Short-term goals include meeting program requirements. This is a dynamic process and it is updated and evaluated continually. NYSEFC uses financial modelling to direct program management. A liquidity model is used to track sources of funding and availability of funds that incorporates real-time data to reflect sources and uses of funds. Long-term models forecast capital market activity and is used to make projections of state lending capability. Bonds are issued in various formats. Leveraging is done 2-4 times per year.

NYSEFC has a team in house that services the loans and attributes the performance of the loan portfolio to that group of employees which monitor the repayments of clients, and to the extent possible, communicates responsibilities to assistance recipients. From time to time, requests for restructuring are received. These are rare and this is due to good up-front communication with clients in regards to expectations of NYSEFC. A "watch list" is maintained for delinquent clients. Clients with an inability to make repayments are considered for refinancing under hardship programs.

### **Compliance with Audit Requirements**

Annual independent audits (combined audited financial statements and Single Audit) are carried out each year by KPMG, which examine CWSRF and DWSRF program finances in great detail. Audited basic financial statements and the A-133 audit for the years ending March 31, 2015 and March 31, 2016 will be issued shortly. No deficiencies were found in the previous year's report. The DWSRF program's financial operations conform to Generally Accepted Accounting Procedures (GAAP).

As required under Single Audit Act regulations, for equivalency projects, assistance recipients that expend \$750,000 or more of Federal funds in a fiscal year are required to submit Single Audit Act Audit Reports. Recipients of financing for equivalency projects are informed of Single Audit requirements in the Project Financing Agreement.

### **Cash Draws and Transaction Testing**

NYSEFC maintains control of the cash draw process and maintains a thorough process for reviewing and collecting all invoices. The state corrects all improper payments that are detected. Automated Standard Application for Payments Draw Records and supporting documentation demonstrate full compliance with activity coding and proportionality requirements as set forth by grant conditions. NYSEFC receives disbursement requests and recertifies that they are meeting all terms of assistance agreements. Cost documentation is included in the disbursement request. Documentation is reviewed to determine the eligibility and completeness of the disbursement request. New York funds all program disbursements with recycled funds first, and then batches these disbursements and makes cash draws only a few times per year at the correct ratio of 100% Federal funds for projects and set-asides.

Transaction testing was conducted by EPA Region 2's financial analyst at the NYSEFC office from April 24 through 28, 2017. In keeping with normal operations, New York State disburses its funds to assistance recipients and subsequently reimburses itself via outlays. Four cash transactions were reviewed totaling \$42,834,801.98. \$7,406,961.98 was for set-aside or administration cash transactions and \$35,427,840.00 was for project cash transactions. Transaction testing determined that New York State reviews invoices and approves disbursements in a proper manner. New York State used the correct proportionality ratio to calculate drawdown for both project and administrative disbursements. None of the reviewed cash transactions were identified as improper and all disbursements were for eligible costs.

*Appendix E contains the New York State DWSRF Program FY 2016 Transaction Testing Summary Table.*

### **Assessment of Financial Capability and Loan Security**

Each assistance recipient must complete a questionnaire documenting financial circumstances as part of the financial capability evaluation process. Additionally, the State Controller's office compiles and publishes financial health and credit data for all municipalities in New York State. The NYEFC also accesses public domain financial information and compiles a report. A financial analyst examines this all sources of data and follow up information is obtained from the assistance recipient. All data sources are used by the NYSEFC to evaluate terms of assistance for each assistance recipient. All assistance recipients have their taxing authority and credit evaluated by NYSEFC, thereby assuring a dedicated source of revenue for repayment. Assistance recipients always have access to additional funding in the form of "phased points" for projects that are still incomplete.

New York State's DWSRF program has procedures in place for assessing the technical, financial and managerial (TFM) capacity of their assistance recipients. The NYSDOH both collects TFM capacity evaluation forms and conducts outreach programs including the Operator Certification Program to ensure technical and managerial capacity. Projects submitted by systems that lack technical, managerial or financial capacity or are classified as priority systems based on EPA's Enforcement Targeting Tool (ETT) are not eligible for funding unless the proposed project will ensure capacity or compliance.

### Financial Risks

It is the opinion of the NYSDOH that Federal budget cuts present the largest challenge to the long-term viability of the program. Ongoing cuts to the federal cap grants reduces the number of projects that can be funded. State representatives stated that every \$100,000 of the cap grant that is reduced, New York State loses \$300,000 of project funding power because they leverage 3:1. DWSRF funding has decreased from \$89.4 million in 2010 to \$39.9 million in 2016. This \$49.5 million difference equates to \$124 million in reduced project funding capacity.

The NYSDOH also expressed concern that the requirement to provide additional subsidization reduces the amount of cash that flows back into the program from assistance recipients.

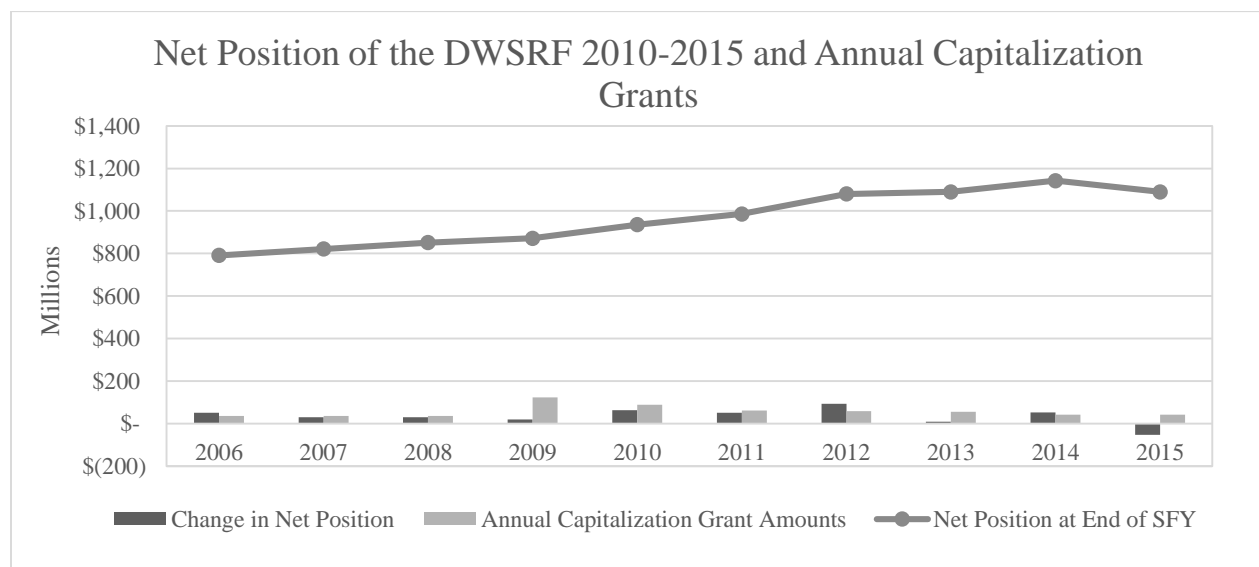
## VIII Financial Performance of the DWSRF Program

### Health of the Fund

A healthy, financial viable DWSRF program can provide a high volume of financial assistance during each fiscal year while maintaining the ability to fund projects in perpetuity. The available audited financial statements show that the NYSDOH and the NYSEFC are effective managing partners of the DWSRF and are working to establish a program that is sustainable and effective. As of the time of this report, New York has no defaults and all borrowing entities have been evaluated for their financial solvency in accepting DWSRF financing.

As of the most recent NIMS reporting year, New York's DWSRF program has executed a cumulative \$4,104,226,165 in assistance to finance drinking water projects. NYSDOH maintains adequate controls over the loan execution and collections process. The program's total assets (current and noncurrent) at the beginning of SFY 2015 were equal to \$2,127,141,925. Total assets increased 0.8% to \$2,145,743,071 by the end of SFY 2015.

New York's DWSRF fund has exhibited steady growth over the past years but has decreased in the past year. Net position at the end of SFY 2015 was \$1,089,547,764. This is 4.6% less than net position at the beginning of SFY 2014, \$1,142,197,943. The chart below shows net position over time as a line graph and the annual capitalization grant amounts and change in net assets as column graphs:



A large percentage of the growth New York attained in the years above was due to the capitalization grants and annual state match contributions. In most cases, the change in net position has been less than the amount of the annual capitalization grant. This indicates that the program disburses a sizable amount of assistance each year.

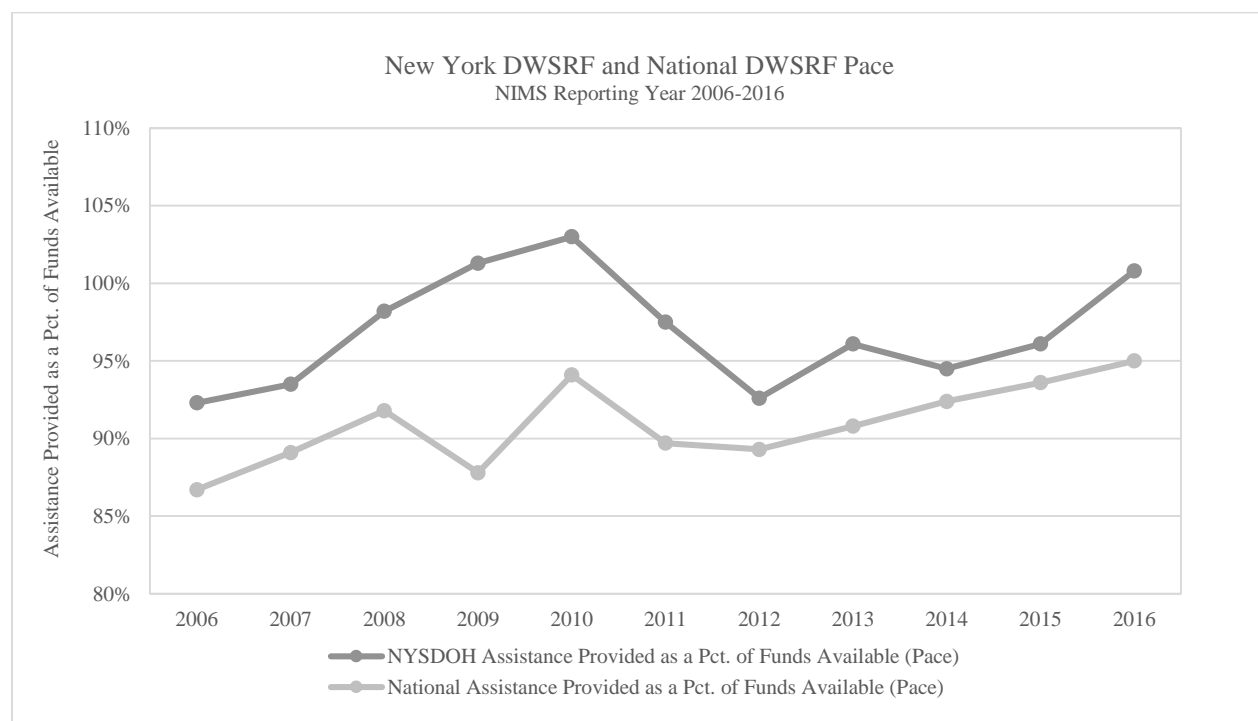
### DWSRF Financial Indicators

Financial indicators serve to gage the effectiveness of NYSDOH and NYSEFC's management of the DWSRF program. The following table shows selected financial indicators for New York State's DWSRF program for NIMS reporting years 2014-2016. It also shows how these numbers compare with 2016 National NIMS data:

New York State DWSRF Program Financial Indicators NIMS Reporting Year 2016				
Financial Indicator	2014	2015	2016	2016 National
Program Pace (Assistance as a % of Available Funds)	94.5%	96.1%	100.8%	95.0%
Return on Federal Investment	405.9%	382.6%	418.7%	179.5%
Disbursements as a % of Assistance	97.8%	92.4%	96.7%	86.3%
Net Return after Forgiving Principal (Excluding Subsidy)	\$414,492,168	\$461,117,313	\$494,823,288	\$1,867,434,961 <sup>5</sup>
Net Return on Contributed Capital (Excluding Subsidy)	51.1%	53.5%	56.7%	12.0%

### Pace of the DWSRF Program

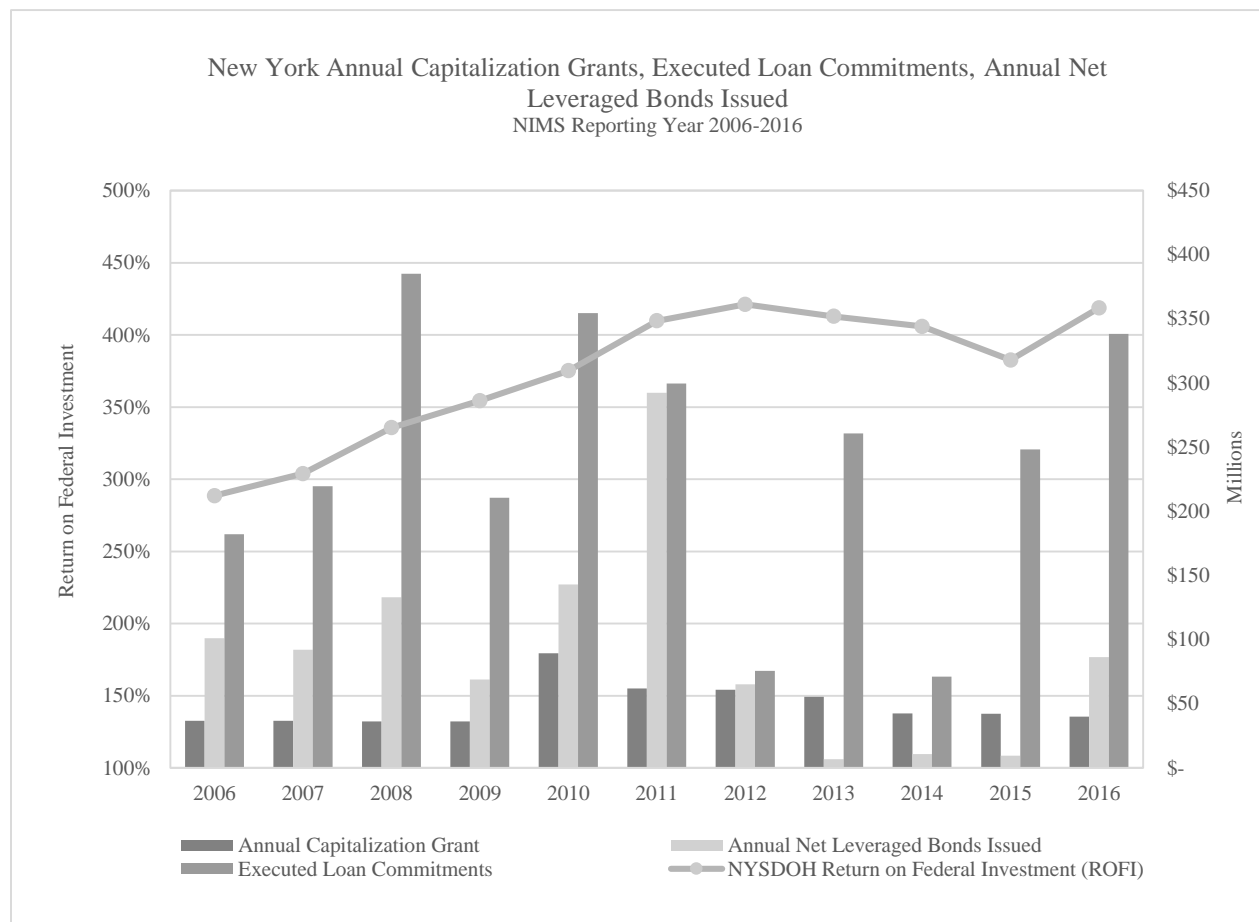
Pace, at 100.8%, has been increasing since 2014 and is higher than the national average for NIMS reporting year 2016 at 95.0%.



<sup>5</sup> National total.

### Return on Federal Investment (ROFI)

ROFI is the amount of assistance the state has provided for each federal dollar of capitalization grant received by the state. New York State has an aggressive leveraging program which allows them to provide a greater amount of assistance per dollar of Federal Capitalization Grant. New York's 2016 ROFI was 418.7%, substantially above the national average<sup>6</sup> of 179.5%:



### Disbursements as a Percentage of Assistance Provided

This indicator describes how quickly funds are disbursed for executed loan agreements and is equal to cumulative loan disbursements divided by cumulative assistance provided. The state, at 96.7% is above the 2016 national average for the states (86.3%). New York State is making a very successful concerted effort to spend down funds and reduce ULOs.

### Net Return after Forgoing Principal (Excluding Subsidy)

This indicator represents how well the DWSRF is maintaining invested or contributed capital. It is equal to the DWSRF program's net earnings after loan principal has been forgiven. If this number is greater than zero it means the DWSRF is accumulating funds. For the last three years, net return has remained high showing that the fund is maintaining invested capital effectively.

### Net Return on Contributed Capital

This indicator more fully describes the concept of "Net Return" as it shows the percentage of contributed capital that returns to the DWSRF funds. For 2016, New York had a net return on contributed capital of 56.7%, which exceeds the national average for all states (12.0%).

<sup>6</sup> Includes non-leveraging states.

## IX Set-Aside Observations

### General Set-Aside Funding

The NYSDOH submits a workplan every year outlining its ongoing set-aside activities, the amounts reserved to fund them and the goals of the set-aside programs. NYSDOH routinely creates workplans of high-quality. These workplans are submitted on-time and contain all the necessary elements. Workplan goals are coordinated with the State's public drinking water program. No changes in the activities performed have occurred thereby making amendments unnecessary. The NYSDOH documents its activities in set-aside activity reports, titled "Performance Status Reports" (PSRs). These correspond to the set-aside workplans that are submitted annually. The PSRs identify success measures for each project and indicate progress towards milestones. Overall the PSRs indicate that the state has achieved all goals in its set aside workplans, although it has been unable to complete any Comprehensive Performance Evaluations (CPEs) due to travel restrictions.

### General Account Management

New York State maintains separate accounts for set aside funds. These accounts are subject to the same level of oversight as the larger DWSRF fund. The State does not make any loans under section 1452(k)(1)(C) of the SDWA as New York State has not elected to utilize the 15% Local Assistance and Other Programs set-aside.

### Specific Set-Aside Requirements

Set-aside equipment and salaries are proportionately funded. The proportion charged to set-asides is documented by employee timesheets. Additionally, along with the application, the NYSDOH submits detailed budget tables which include backup documents that itemize set-aside budget items. Transaction testing and conversations with DWSRF program management has confirmed that set-aside funds are only used for eligible purposes. The 1:1 state match for the PWSS program has been made each year it was required and is funded through in-kind services.

## X Project File Review

As per the most recent SRF Procedures and Attachments, the Regions are required to conduct one onsite review during each FFY. During these reviews, two Base program project files are reviewed. The following table contains project information for the two projects that were examined during this onsite review:

Project Name	Project Number	Agreement Executed	Total SRF Assistance	Additional Subsidization	Interest Rate	Loan Term
Babylon (T)	#18114	3/31/2016	\$1,200,000	\$0	0.38%	5 Years
Poughkeepsie (C)	#18120	11/5/2015	\$9,922,000	\$0	0.43%	3 Years

NYSDOH has exhibited good file management and organization. Electronic copies of various project file documents were forwarded to Region 2 staff for review prior to the site visit. Region 2 acknowledges the work and effort expended on the part of NYSDOH to present their project files in a way that is conducive to a smooth project file review process. The following is a summary of findings:

### Project Descriptions

Both projects were eligible for DWSRF funding. The project descriptions below are edited versions of those in the Project Benefits Reporting System (PBR):

*Babylon (T): This project will provide resiliency by ensuring continued service during storm events through the consolidation of three existing privately-owned public water systems. The project includes the construction of a new water treatment plant, new pump station, new storage tanks, new backup power source; modifications to existing wells or construction of new well; and upgrading the distribution system including installation of new transmission mains, new distribution mains and new service lines. Critical components will be elevated above flood level. During Superstorm Sandy (Sandy) the Oak Beach area was without electricity for approximately 30 days, and the homes within these three public water systems could not utilize water from the public water system during this entire period. The mitigation project proposed will combine the three separate systems into one system and provide pumps to the well points to pressurize the entire distribution system. The project will also provide water treatment, new water distribution system, storage and backup power and other critical components to the water system.*

*Poughkeepsie (C): This project includes upgrades to the existing Poughkeepsie surface water treatment facility to support disinfection by-product compliance. Disinfection by-product precursor removal will be enhanced by modifying the existing coagulation system, in conjunction with the addition of ozonation. The modifications will alter the function of the existing Poughkeepsie Water Treatment Facility (PWTF) which will require modifications to the existing chemical feed processes, the existing waste residuals handling processes, as well as the existing system pumping processes. Ancillary treatment upgrades include replacement of raw water feed pumps, as well as modifications to the existing treatment residuals handling process; including replacement of the existing centrifuge units. The PWTF supplies water to the City of Poughkeepsie, the Town of Poughkeepsie, and the Village of Wappinger Falls.*

#### **Project File Observations**

Project Name	Deficiency in File
Babylon (T)	<ul style="list-style-type: none"> <li>No significant deficiencies.</li> </ul>
Poughkeepsie (C)	<ul style="list-style-type: none"> <li>No significant deficiencies.</li> </ul>

## **XI Findings**

- New York State did not submit their FFY 2014-2015 biennial report by the required deadline of December 31, 2016.

## **XII Required Actions**

- New York State will work with EPA Region 2 to update the Operating Agreement.
- Where possible, AIS De Minimis waivers will be included in project files.
- New York State should update its inspection checklists to include relevant DWSRF requirements.
- New York State should make every effort to submit their next biennial report by the required deadline.

## **XIII Conclusion**

Based on the documents that were reviewed, the New York State DWSRF program is in sound financial health, well managed, and responsive to new initiatives. EPA Region 2 commends the New York State Department of Health and the New York State Environmental Facilities Corporation for working together to effectively implement an excellent and high-performing DWSRF program focused on protecting human health.

## **XIV Compliance with SRF Annual Review Guidance Certification**

EPA Region 2 has conducted an annual review of New York State's DWSRF Program for FFY 2016 in accordance with EPA's SRF Annual Review Guidance.